

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DAVID BUCHANAN, on behalf of
himself, FLSA Collective Plaintiffs and
the Class,

Plaintiff,

-against-

PAY-O-MATIC CHECK CASHING
CORP., and THE PAY-O-MATIC
CORP.,

Defendants.

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Appearances:

For the Plaintiff:

ANN SEELIG

Lee Litigation Group, PLLC

148 West 24th Street, 8th Floor

New York, New York 10011

For the Defendants:

JONATHAN M. KOZAK

Jackson Lewis, P.C.

44 South Broadway, 14th Floor

White Plains, New York 10601

BLOCK, Senior District Judge:

Prior to his retirement, Magistrate Judge Steven Gold issued a report and recommendation (“R&R”) recommending approval of a proposed settlement, with certain modifications, in this putative class action. The R&R advised that “[a]ny objections to the recommendations made in this Report must be made . . . on or before October 22,” and warned that “[f]ailure to file timely objections may waive the right to appeal the District Court’s Order.” R&R at 21. The R&R was

electronically served on all parties as soon as it was entered. To date, no objections have been filed.

Where clear notice has been given of the consequences of failure to object, and there are no objections, the Court may adopt the R&R without de novo review. *See Thomas v. Arn*, 474 U.S. 140, 149-50 (1985); *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) (“Where parties receive clear notice of the consequences, failure timely to object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.”). The Court will, however, excuse the failure to object and conduct de novo review if it appears that the magistrate judge may have committed plain error. *See Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000).

No error, plain or otherwise, appears on the face of the R&R. The Court agrees with Magistrate Judge Gold’s assessment that the main settlement was fair and reasonable, but that the addendum was not. It further agrees that the proposed class notice was deficient because it failed to advise class members of their right to appear through their own counsel.

Accordingly, the Court adopts the R&R. The Court will enter an order approving distribution of class notice upon submission of a proposed notice that corrects the deficiency identified in the R&R.

SO ORDERED.

/S/ Frederic Block
FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
February 24, 2021